

SENATE BILL NO. 460

INTRODUCED BY E. FRANKLIN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT PUBLIC UTILITIES PROVIDING GAS OR ELECTRIC SERVICE AND GAS OR ELECTRIC TRANSMISSION OR DISTRIBUTION SERVICES PROVIDERS FUNCTIONALLY SEPARATE THE SUPPLY, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC ENERGY AND NATURAL GAS FROM APPLIANCE MERCHANDISING AND SERVICING."

WHEREAS, public utilities and transmission or distribution services providers of electric energy and natural gas have an established customer base in areas served, an established workforce and administration system for providing regulated services, and guaranteed revenue for providing those services; and

WHEREAS, the established customer base, workforce, administrative system, and guaranteed revenue related to regulated services create an inherent competitive advantage when the public utility or transmission or distribution services provider furnishes unregulated services, such as appliance merchandising, service, and repair, in competition with private appliance merchandisers and service providers; and

WHEREAS, requiring the functional separation of appliance merchandising and servicing from the supply, transmission, and distribution of electric energy or natural gas could best protect against cross-subsidization that is unfair to competitors and ratepayers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 4] is to:

(1) prevent regulated public utilities providing gas or electric services and gas or electric transmission or distribution services providers from including merchandising and servicing of appliances in the calculation of the revenue requirement for energy, transmission, or distribution prices; and

(2) reduce competitive advantages or disadvantages in the arena of appliance merchandising and servicing among private contractors, public utilities, and transmission or distribution services providers.

1 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 4], the following
2 definitions apply:

3 (1) "Cost of service" means the costs that a public utility providing gas or electric services or a
4 gas or electric transmission or distribution services provider incurs in providing services regulated by the
5 commission.

6 (2) "Functionally separate subsidiary" means the entity created as a result of the public utility's
7 or transmission or distribution services provider's functional separation of the supply, transmission, and
8 distribution of electric energy or natural gas from appliance merchandising and service.

9 (3) "Merchandising" means the sale of new, used, or remanufactured appliances and comprises
10 all activities incident to the sale, including advertising, promotion, delivery, appliance removal, installation,
11 initial setup and adjustment, ductwork, ventilation, and wiring.

12 (4) "Servicing" means:

13 (a) the maintenance and repair of nonutility services, including safety inspections, pilot lighting,
14 cleaning, adjustments, and installations of new mechanical parts that are not part of routine or emergency
15 responses;

16 (b) business safety inspections; or

17 (c) energy efficiency audits.
18

19 NEW SECTION. **Section 3. Public utility appliance merchandising and servicing -- prohibition --**
20 **exception.** (1) Except as provided in subsection (2), a public utility providing gas or electric service or a
21 gas or electric transmission or distribution services provider may not merchandise or service household gas
22 or electric appliances.

23 (2) A public utility providing gas or electric service or a gas or electric transmission or distribution
24 services provider may engage in appliance merchandising or servicing that involves only minor repairs,
25 maintenance, or adjustments that have been identified and determined necessary as a result of the normal
26 course of a business safety inspection, an energy efficiency audit, or a routine or emergency response if
27 the merchandising and servicing activities are provided through a functionally separate subsidiary.
28

29 NEW SECTION. **Section 4. Functional separation -- requirements.** (1) Public utilities providing gas
30 or electric services and gas or electric transmission or distribution services providers offering appliance

1 merchandising and servicing shall file a plan with the commission to create a functionally separate
2 subsidiary. The plan must include:

3 (a) the structure of the functionally separate subsidiary; and

4 (b) the amount of royalty paid to the public utility or transmission or distribution services provider
5 or, if a royalty payment is not made, the reason for nonpayment.

6 (2) A public utility or a transmission or distribution services provider may not include the costs
7 associated with appliance merchandising or servicing in the cost of service for rate purposes.

8 (3) The commission shall monitor the public utility's or the transmission or distribution services
9 provider's compliance with subsection (2) by requiring regular audits.

10

11 NEW SECTION. **Section 5. Codification instruction.** [Sections 1 through 4] are intended to be
12 codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to
13 [sections 1 through 4].

14

- END -